

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FEDERAL TRADE COMMISSION, STATE OF NEW YORK, STATE OF CALIFORNIA, STATE OF OHIO, COMMONWEALTH OF PENNSYLVANIA, STATE OF ILLINOIS, STATE OF NORTH CAROLINA, and COMMONWEALTH OF VIRGINIA,	:	20cv00706 (DLC)
	:	
	:	<u>Memorandum Opinion</u>
	:	<u>and Order</u>
	:	
	:	
Plaintiffs,	:	
	:	
-v-	:	
	:	
VYERA PHARMACEUTICALS, LLC, AND PHOENIXUS AG, MARTIN SHKRELI, individually, as an owner and former director of Phoenixus AG and a former executive of Vyera Pharmaceuticals, LLC, and KEVIN MULLEADY, individually, as an owner and former director of Phoenixus AG and a former executive of Vyera Pharmaceuticals, LLC,	:	
	:	
Defendants.	:	
	:	
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DENISE COTE, District Judge:

Defendant Martin Shkreli has moved to stay discovery until 2023, when he is due to be released from prison. Shkreli's motion is denied.

Background

This action was filed on January 27, 2020. Discovery began shortly thereafter. An Order of June 15 denied the defendants' motion to stay discovery pending resolution of their motions to dismiss. An Opinion of August 18 largely denied their motions

to dismiss. See Fed. Trade Comm'n v. Vyera Pharm., LLC, No. 20CV706 (DLC), 2020 WL 4891311, at *14 (S.D.N.Y. Aug. 18, 2020) ("Vyera"). This Opinion is incorporated by reference, and familiarity with it is assumed.

Fact discovery is scheduled to end on February 26, 2021. Shkreli's deposition is set to proceed on January 27 and 28, 2021. His recent request to delay his deposition until late February was denied. Expert discovery is scheduled to conclude on August 6. The pretrial order in this non-jury trial is due on October 20.

Shkreli is currently incarcerated at the Allenwood Low Security Federal Correctional Institution. He is due to be released from custody on September 14, 2023.¹

On November 25, 2020, Shkreli filed this motion to stay discovery. The motion became fully submitted on December 11.

Discussion

Shkreli moves to stay this litigation, and in particular further discovery, until he is released from prison. He asserts difficulty in communicating with his counsel to prepare his defense to the claims in this litigation while incarcerated.

¹ Shkreli's prison consultant calculates that Shkreli could be released to a halfway house as early as mid-September 2021 if Shkreli earns enough credits from participation in certain programs in prison.

"The power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." Louis Vuitton Malletier S.A. v. LY USA, Inc., 676 F.3d 83, 96 (2d Cir. 2012) (citation omitted). A district court has discretion to stay discovery for "good cause" pursuant to Rule 26 of the Federal Rules of Civil Procedure. The party seeking the stay of discovery bears the burden of demonstrating good cause.

Shkreli has not shown "good cause" for a stay of this complex litigation. This action is brought by the federal government and several States. The parties and the public have a significant interest in resolving the issues raised by the plaintiffs' claims with due expedition. The issues principally arise from events that began years ago, in 2014. The core of the allegedly anticompetitive conduct underlying the plaintiffs' claims appears to remain ongoing. Should the plaintiffs prevail in this litigation, the impact on the generic drug market and consumers of pharmaceuticals would be prompt and significant. The plaintiffs also seek equitable monetary relief. The public interest weighs strongly against any unnecessary delay of this litigation.

Shkreli has failed to show that he will be unfairly prejudiced by the litigation proceeding while he is

incarcerated. This litigation was filed after a lengthy administrative investigation of Shkreli's activities. The plaintiffs promptly produced the administrative record to the defendants, and the defendants have had months to examine it. The protocol for discovery was entered last Spring, and the parties have relied on it and planned accordingly.

Shkreli's application is also untimely. Shkreli's delay in bringing a motion based on his alleged lack of communication with counsel undermines his assertion that the breadth of discovery in this action requires a stay.

Shkreli has also failed to demonstrate good cause to support his request for a stay. Shkreli claims that, because of his incarceration, he has not had, and will not have, sufficient access to counsel to prepare for his deposition and participate in his own defense. He adds that a failure to stay discovery would violate his constitutional right to access to courts, and, as a corollary, his right to counsel.

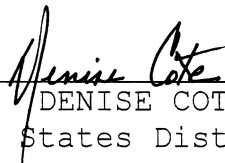
Shkreli is represented by a team of experienced and able counsel from two law firms. Shkreli has at his disposal several methods for communicating with his attorneys, including sending and receiving legal mail, the availability of legal visits for

much of the time this litigation has been pending,² unmonitored legal calls, and emails and calls over the Bureau of Prison's ("BOP") TRULINCS and TRUFONE systems.³ Shkreli's prison consultant acknowledges that the BOP has "done a somewhat satisfactory job at arranging communication thus far." Shkreli's access to his counsel is at least as good as that provided to incarcerated defendants facing criminal charges.

CONCLUSION

Shkreli's November 25, 2020 motion to stay discovery pending his release from prison is denied.

Dated: New York, New York
January 8, 2021



DENISE COTE
United States District Judge

² Despite invitations by the Bureau of Prisons to counsel to schedule visits to meet with Shkreli, his attorneys have not done so. While defense counsel quite rightly point to the ongoing pandemic and the risks to health posed by travel and prison visits, it nonetheless remains true that counsel have chosen not to avail themselves of this opportunity.

³ In a letter of September 25, 2020, the plaintiffs represented that they would not seek from the BOP any further communications between Shkreli and his attorneys conducted over monitored lines.